

International Law Enforcement Against Immigrant Smuggling in Indonesian Waters

Muhamad Furqon Juanda¹, Amiludin², Dwi Nur Fauziah Ahmad³

^{1,2,3}Faculty of Law Muhammadiyah University of Tangerang, Banten

Email: tsamanytrans@gmail.com (Corresponding Author)

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Abstract

Indonesia, which is in the middle of the world, could become a place where transnational crime, in this case human smuggling, takes place. With this position, Indonesia could become a place where illegal immigrants or people who are being smuggled end up. A systematic literature review (SLR) will be used to gather data to figure out what the problems are in this study. Systematic Literature Review (SLR) is the process of finding, choosing, and critically evaluating research results to answer well-formed questions. One way to deal with the problem of people sneaking into Indonesian waters is through international law enforcement. Because international law enforcement can protect the human rights of people who are smuggling immigrants, it can also keep Indonesian waters safe and secure. Indonesia is working through domestic legislation to address the problem of people smuggling. The effort consists of two parts, namely, prevention efforts and repressive efforts. The Indonesian government should play a more active role in dealing with illegal immigrants through the Directorate General of Immigration and not just passively wait for UNHCR and IOM.

Keywords: *Smuggling, Illegal Immigrants, Indonesian Waters, International Law*

INTRODUCTION

Indonesia is a Southeast Asian country on the equator between Asia and Australia between the Indian and Pacific oceans. (Listiyono et al., 2021) Indonesia is one of the countries with the largest sea territory, as two-thirds of its territory consists of water. Geographically, Indonesia is a powerful marine nation. (Marsetio, 2015) Based on 2015 Indonesian Navy Hydros Data, Indonesia has a coastline length of around 108,000 km, has a sea area of around 6.4 million km² consisting of a territorial sea with an area of around 290,000 km², while the sea area in the additional zone is around 270,000 km², an area The exclusive economic zone sea is about 3 million km², the area of inland waters is 2.1 million km², and the land area is about 2.01 million km². (Arsyad, 2020) Indonesia has temporary islands of 17,504, revised islands out of 13,466 islands (Puryono, 2016).

There are maritime security issues that need serious attention because of the vastness of the sea and Indonesia's geographical location as an archipelagic country. Threats to law and order, threats to navigation (absence or loss of navigational aids), resource threats (deterioration and contamination of the marine environment), threats of violence (piracy, sabotage and terror against vital objects) (SITOMPUL, 2014) these are all part of maritime security issues (illegal fishing, immigrant smuggling, illegal exploration and exploitation of natural resources, as well

as confiscation of treasures, goods and smuggling of weapons, and timber smuggling by sea). Maritime security concerns have significantly impacted Indonesia's diplomatic relations..(Mandasari, 2017).

Approximately 108,000 km of Indonesian coastline consists of 17,504 islands, surrounded by ocean. It can be seen how vulnerable to the risk of "illegal immigrants and/or people smuggling" to the country. As of August 2021, there were 13,343 Several countries' refugees and asylum seekers were living in Indonesia that month. Smuggling of illegal immigrants into Indonesian waters is also quite common. IOM (International Organization for Migration) continues to assist 7,483 refugees and 3,223 asylum seekers from 20 different countries including Afghanistan, Somalia, Myanmar, Sri Lanka, Sudan, Palestine, Iraq, Iran, Pakistan, Ethiopia, Eritrea, Yemen, Vietnam, Egypt, Syria , Bangladesh, Jordan, Kuwait, Congo, and stateless people (admin-dev, 2021).

Table 1
Number of Indonesian Refugees by Country of Origin (June 2021)

	COUNTRY	VALUE/PERSON
1	Afghanistan	7.490
2	Somalia	1.376
3	Myanmar	683
4	Sudan	14
5	Irak	7
6	Others	2.618
	Total	12.188

Source: Data books, August 2021 (Jayani, 2021)

Indonesia, which is located at crossroads in the world, has the potential to become a place for transnational crimes, in this case people smuggling. With this position, Indonesia has the potential turn into a transit and/or destination country for illegal immigrants who doesn't fulfill legal term and/or people smuggler. (Salam, 2020).

Smuggling is a phenomenon that often occurs when someone smuggles goods into or out of a country with a certain background. The term "immigrant smuggling" refers to the practice of moving individuals or groups illegally (and unlawfully) across national borders for financial gain.(Martin & Miller, 2000)

The term "illegal immigrant" can refer to a person or group of people who enter a country without proper documents or remain there after their residence permit expires. There are three types of illegal immigration: illegal border crossings, some border crossings that appear official but are actually illegal, and people who stay in Indonesia after their legal immigrant status ends.(June, 2020)

The smuggling of illegal immigrants is a crime that ignores the human rights of immigrants who are transported illegally. This crime can be detrimental to the countries of origin and destination of these immigrants, so efforts are needed to stop it. Enforcement of international law against smuggling of illegal immigrants is one of the efforts to stop this crime.(Saputra, 2017). International law enforcement can be carried out in several ways, including through the preparation and application of international regulations, law enforcement against the perpetrators of immigrant smuggling, increased cooperation between countries, and increased coordination between the government and related international institutions.(Iskandar & Nursiti, 2021).

International law enforcement against smuggling of illegal immigrants is very important in order to stop this crime and guarantee the rights of legal immigrants. In addition, law enforcement can also maintain stability and security at the global level (Sukinto & SH, 2022)

In addition, this study found that 145 applicable legal provisions, including 1951's Refugee Convention, form the basis for rules or legal frameworks used in the field of immigration, particularly those relating to refugees, immigration and people smuggling (people smuggling). (Ilmih, 2017)

The Immigration Law, namely Law Number 6 of 2011 regulates illegal immigrants to Indonesia. The application of this law has not been able to control the presence of illegal immigrants in Indonesia. Hikmahanto Juwana, an international law expert, said that the government must make a comprehensive immigration policy. He underlined the need for the government to strengthen regulations regarding foreigners entering Indonesian territory illegally. "Here the Directorate General of Immigration has a very important role. Furthermore, he added, patrols in the sea area must be intensified by adding patrol boats owned by the Indonesian Navy and Water Police. "The law must be enforced by the competent authorities regarding perpetrators human smuggling. the government, through its representatives, must also socialize the people of the countries of origin of illegal immigrants that Indonesia will impose severe sanctions on illegal immigrants (Iwangga, 2019).

Therefore, further research is required to comprehend the types of problems and how illegal immigration cases are handled in Indonesia. Thus, it becomes clear why illegal immigrants come to this country and whether it serves as a final destination or only as a transit point. The study will also indicate the country of origin or country of origin of illegal immigrants, as well as the circumstances surrounding their need to engage in these risky activities. Indonesia, which has been the target of various illegal immigrant activities, is expected to be able to respond effectively by reducing and possibly even stopping the flow of illegal immigrants in the future (Aldika, 2019)

There is also something that makes this research different from other research, in that my research focuses on understanding international law enforcement against illegal immigrant smuggling and reveals the countermeasures carried out by the Indonesian government against illegal immigrant smuggling in Indonesian waters. Based on the explanation above, the researcher is therefore interested in further researching International Law Enforcement Against Immigrant Smuggling in Indonesian Waters and studying it further in a study.

a Formulation of the problem

Based on the described in the previous context, the author can formulate 2 (two) problems, namely:

1. How is international law enforced against smuggling of illegal immigrants in Indonesian waters?
2. How is the preventive measure by the Government of Indonesia against the smuggling of illegal immigrants in Indonesian waters?

RESEARCH METHOD

In examining the problems in this study, data will be collected through a Systematic Literature Review (SLR). Systematic Literature Review (SLR) is identifying, selecting, and critically evaluating research results to answer well-formulated questions. In carrying out this research, researchers collected various journal articles and conference or seminar results that were indexed and existed in the Google Scholar database, science direct, the Garuda portal, Sinta Ristekdikti, and Garuda Ristekdikti which have credibility and are recognized by academics, in order to facilitate the search for articles and reduce the bias that will use the keywords "Smuggling, Illegal Immigrants, Indonesian Waters and International Law". In addition, these publications are carefully reviewed based on their discussion and provided in a

table that includes the researcher's name and publication year, the article's title, and the results of the study. After thoroughly reviewing some of the study's findings, the researcher compares and derives inferences from the data. The arguments presented here are intended to provide research on what is legal and what is not about the facts or events resulting from this investigation.

DISCUSS AND ANALYSIS

The Concept Of International Law Enforcement.

A brief description of migrant smuggling, migrant smuggling is defined as “an act aimed at seeking financial or other material gain, either directly or indirectly, by illegally entering a person into a country of which the person is not a citizen or permanent resident” (Nuryani & Imigrasi, 2019). In other words, migrant smuggling is a transnational organized crime in which perpetrators assist others in illegal border crossings for profit (Kahar, 2021). Those who use smuggling services can be migrants, asylum seekers, and so on. The perpetrators of crimes, including foreign terrorist fighters, also often use the services of migrant smugglers (Rizaldi, 2020). Smuggled migrants are not "victims" of migrant smuggling crimes, but it does not rule out that they can also become victims of other crimes during the trip, including significant crimes, such as human trafficking, persecution, and rape. (McAdam, 2021). This action is detrimental to the country in question because it can generate security and social welfare problems. Therefore, the enforcement of international law against the smuggling of immigrants is essential to dealing with this problem (Sukinto & SH, 2022).

International law enforcement is an effort to implement and follow international regulations governing the smuggling of illegal immigrants. International law enforcement is another way to protect the human rights of legitimate immigrants while also ensuring global stability and security. (Julianthy, 2020).

The 1982 United Nations Convention on the Law of the Sea (UNCLOS), the United Nations Convention Against Transnational Organized Crime, and the Protocol Against Smuggling of Migrants by Land, Sea, and Air supplement the United Nations Convention Against Transnational Organized Crime and are contained within Indonesian positive law (SITOMPUL, 2014.).

In addition to positive law, safeguards in Indonesian territorial seas are directed by international rules outlined in the 1982 Convention on the Law of the Sea.. Article 24 of Law No. 6 of 1996 on Indonesian waters regulates the enforcement of violations and criminal acts that occur in Indonesian territorial waters either by using national ships or foreign ships and will be dealt with based on international conventions and applicable statutory provisions (Pratomo, 2016).

Article 1 paragraph (32) of Law No. 6 of 2011 on Immigration describes the definition of "smuggling of immigrants." One of the crimes against immigration is "smuggling of immigrants" (P. Pramono, 2021.). The smuggling of migrants by sea is governed by Article 7 of the Protocol Against the Smuggling of Migrants by Land, Sea, and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, international maritime law stipulates that member states shall cooperate extensively to prevent and minimize the smuggling of people by sea. (UNCLOS 1982) (Ikaningtyas, 2017). It can be concluded that all prevention and handling of immigrant smuggling in Indonesian waters must comply with the terms of UNCLOS 1982, Alternatively the appropriate Indonesian statute is The rights of passage via the Archipelago Sea Channel Islands are governed by Law No. 6 of 1996 on Indonesian waterways, Law No. 6 of 2011 on immigration, and Government Regulation No. 37 of 2002 on the rights and responsibilities of foreign ships and aircraft.

The United Nations Office on Drugs and Crime (UNODC) defines international law enforcement as "a combination of steps undertaken by UN member states to guarantee that

applicable international norms are applied fairly and effectively, and to ensure that member states can effectively implement international law." (Tri, 2017).

International law enforcement can be done in several ways, including through the preparation and application of international regulations, the enforcement of laws against migrant smugglers, increased cooperation between countries, and increased coordination between governments and relevant international institutions (Iskandar & Nursiti, 2021).

Regarding the smuggling of immigrants, a Boer Mauna expert argues that the state has the sovereignty to force its jurisdiction or law in its territory, in this case, including its territorial sea area (Boer, 2001 page 366). Article 2 of UNCLOS 1982 provides as follows:

- a. The sovereignty of a coastal state, including the land area and inland waters, in the case of an archipelago with its island waters, also includes a sea route adjacent to it, which is called territorial waters;
- b. This sovereignty includes the air space above the sea as well as the seabed and separate land beneath it;
- c. The exercise of sovereignty over the territorial sea is subject to this agreement and other international law regulations.

It can be concluded that Article 2 of UNCLOS 1982 gives sovereignty that is coercive to a state to impose applicable law in that state unless there is a provision of the convention that states should obey the right of passage of foreign ships of other countries that enter the territory of the Inland Sea, the Archipelago Sea, or territorial water. Throughout the ship doesn't disturb the peace, security, and sovereignty of the country through its sea area (B. Pramono, 2021).

The implementation of state sovereignty is provided for in Article 4 paragraph 1 of the United Nations Convention Against Transnational Organized Crime, namely, "States Parties shall perform their obligations under its convention in a manner consistent with the principles of equality of sovereignty and territorial integrity of states and non-intervention in the internal affairs of other states". This Agreement recognizes that a state party is a subject of a sovereign state, which has the right to exercise its territorial rights within the geographical borders of the state in issue, including the rights that follow from exercising territorial authorities. (Santoso, 2021).

Article 4 of the United Nations Convention against Transnational Organized Crime affirms that there is no provision in the agreement that allows a state party to exercise its jurisdiction and functions in other regions (Risnain, 2020). Article 4 is then confirmed in Article 11 paragraph 6, which reads:

Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

No provision of the convention shall affect the principles of prosecution, the exercise of justice, or the sanction of criminality controlled in this convention, so that the legal defense used or the principles of law against criminality are entirely within the national law of that state (Santoso, 2021). Article 19 paragraph (2) does not explain directly related arrangements against the crime of smuggling immigrants, but in Article 19 paragraph (2) point (g), it regulates as follows: "unloading or loading any commodity, currency, or person in a manner contrary to the laws and regulations in the fields of customs, fiscal, immigration, and sanitary". Understanding immigration According to Article 1 Paragraph in of Law No. 6 of 2011 on Immigration, "immigration is a matter of traffic of people entering or exiting the territory of Indonesia and its supervision in order to uphold state sovereignty." From this explanation, it can be concluded that there are two elements of immigration regulation, namely (Hajar, 2013):

- a. Arrangements about people's circulation and reside inside the Republic of Indonesia territory;
- b. Rules on the monitoring of foreigners on the Republic of Indonesia's territory.

Based on the above explanation of Article 19, if there is a foreign ship known to carry illegal immigrants, which violates the immigration provisions of a country, it can be determined whether or not a foreign ship is entitled to carry out peaceful passage in the coastal state's territorial sea (Sodik, 2014).

The protocol against the smuggling of immigrants provides for the authority of the state to take action against the perpetrators of the smuggling of such immigrants. Article 4 of the Protocol Against the Smuggling of Migrants by Land, Sea, and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, shall apply to the prevention, investigation, and prosecution of crimes provided for in Article 6 of the Protocol against crimes of a transnational organized crime groups' nature and involvement, as well as the protection of the rights of those who are the targets of these crimes. Persons or immigrants smuggled under this protocol are not named as victims but as objects of transnational crime groups. Unlike the Trafficking in Persons Protocol, which states that people, especially women and children, who are trafficked are victims (Santoso, 2021).

Efforts made to oppose the smuggling of migrants by sea are set out in more detail in Article 8 paragraph 1 of the Protocol Against the Smuggling of Migrants by Land, Sea, and Air, Supplementing the United Nations Convention against Transnational Organized Crime, It provides that a state party with adequate grounds may suspect a vessel flying a foreign flag or flagged as having no nationality. (Santoso, 2021 hlm 234-244).

In Article 6 of the Protocol Against the Smuggling of Migrants by Land, Sea, and Air, Supplementing the United Nations Convention against Transnational Organized Crime, it is required that each state party establish the legality of the crime of smuggling immigrants as a criminal offense because the smuggling is aimed at obtaining money or other benefits (Fadli, 2018).

People smuggling in today's world occurs because of the consent of the smuggled person or persons and on the grounds of seeking individuals to be smuggled for employment and economic improvement, for themselves and/or their families, or to escape persecution or conflict (Lubis, 2017).

People smuggling is defined as a "transnational crime" if it is committed by two or more countries, if it is committed in one country but is prepared, supervised, or controlled from another country, or if it is committed in one country but involves criminal organizations that operate in more than one country but have an impact in another. (Nations, 2000).

Thus, transnational crime involves two or more countries. One of the problems that arises is determining which state has jurisdiction over the perpetrators and the perpetrators themselves. In this case, there are several theories. One of the experts, D.J. Harris, argues that a state should apply its criminal jurisdiction based on the following principle: *Territoriality, nationality, protective, universality dan azas passive personality principle* (Fairman & Dickinson, 1951).

From these four principles, there is already a tendency to apply the universal principle, especially to the development of new types of crimes, namely crimes of a transnational and international nature (Ashari, 2023). Since the Nuremberg and Tokyo trials, the international community has seriously considered the application of universal principles as being extended, that is, not limited to conventional crimes (Mulyadi et al., 2018). People smuggling is defined as a "transnational crime" if it is committed by two or more countries, if it is committed in one country but is prepared, supervised, or controlled from another country, or if it is committed in one country but involves criminal organizations that operate in more than one country but have an impact in another. The alternative law enforcement solution is a new strategy with the

application of the principle "No Save Haven," aimed to restrict the scope of international criminal activity (Atmasasmita, 2005).

International law enforcement is one solution to dealing with the problem of smuggling immigrants into Indonesian waters (Saragih et al., 2021). This is because international law enforcement can ensure the protection of human rights for immigrants involved in smuggling as well as the security and safety of Indonesian waters (Iskandar & Nursiti, 2021). The national legal policy on the smuggling of immigrants is regulated in Law Number 6 of 2011 on immigration (Nuryani & Imigrasi, 2019). Article 59, paragraphs (1) and (2), of the Immigration Law states that smuggling of immigrants is a criminal offense that can be sentenced to a minimum of 1 year and a maximum of 5 years in prison (Sabahal, 2021). While the International Convention on the Enforcement of Laws Against the Smuggling of Immigrants is regulated in the 2000 Palermo Convention on Human Smuggling (Panjaitan, 2022). Article 3 Paragraph 1 of the Palermo Convention states that human smuggling is a criminal offense that must be punished in accordance with the laws of the country concerned (Sahetapy et al., 2022). In the implementation of international law enforcement in cases of smuggling immigrants into Indonesian waters, several cases have been handled with reference to international law. One example is the case of smuggling immigrants from Pakistan to Aceh in 2018 (Rosyid, 2019). In such instances, immigration authorities have arrested and processed illegal immigrants in compliance with existing legislation. International law enforcement efforts in the case include inviting the country of origin of the immigrant to cooperate in handling the case as well as protecting the human rights of immigrants involved in smuggling (Fachri, 2019).

International law enforcement is one solution to dealing with the problem of smuggling immigrants into Indonesian waters. This is because international law enforcement can ensure the protection of human rights for immigrants involved in smuggling as well as the security and safety of Indonesian waters (Saragih et al., 2021).

Law No. 6 of 2011 on Immigration, Law No. 6 of 1996 on Indonesian Seas, Government Regulation No. 36 of 2002 on the rights and responsibilities of aircraft carriers in carrying out peaceful routes through the role of Indonesia, and Government Regulation No. 37 of 2002 on the rights and obligations of ships and planes in carrying out peaceful routes through the role of Indonesia govern the procedures for the elimination of immigrants at sea.

The Indonesian Government's Handling Of The Smuggling Of Illegal Immigrants In Indonesian Waters.

The more open traffic routes between countries both by sea, land, and air cause increased mobility of goods and people to other countries based on different interests and backgrounds (Abdillah et al., 2023). Some are based on political factors, poverty, or economic development factors—in this case, trade between countries. Human mobility to meet needs has the opportunity to make deviations, especially in this case with the movement of people from one country to another by not meeting immigration requirements. These irregularities are similar to human smuggling and illegal immigration, and they are carried out under the guise of requesting asylum from a country. To combat this issue, Indonesia is used as a transit point for illegal immigrants attempting to reach Australia (Nurkumalawati, 2020).

Human trafficking cannot be separated from the activities of illegal immigrants. Ali Asghar Sultaniyeh, Iran's Permanent Representative to the United Nations The conference on the eradication of human trafficking affirms the importance of in-depth research on the causes of the widespread phenomenon of human smuggling. Understanding of freedom and propaganda of excessive freedom have created opportunities for the widespread phenomenon of women and child smuggling and trafficking. (Sukinto & SH, 2022).

Illegal immigration is not only the unauthorized entry of a citizen of one state into another state; there is also a person or group of persons who enter a state lawfully but whose visa has expired, but who remain in and/or reside in that state (Junef, 2020).

Article 3 letters A and B of Protocol against the Smuggling of Migrants by Land, Sea, and Air (SIHOMBING, 2022) :

Letter a Smuggling of migrants means the obtaining, directly or indirectly, of an advantage or other material gain through the illegal entrance into a state of which the person is not a permanent resident;

Letter b Illegal entrance is the act of crossing a border without fulfilling the necessary standards for legal entry into the receiving jurisdiction.

As a result, Article 6 of protocol states that each state must take legislative and other actions to establish criminal acts.

Many factors can contribute to people smuggling, but the first and most important is economic hardship. A country that is not able to facilitate employment, or if there is employment, the minimum wage of employment, is the reason for immigrants to migrate from their country of origin (Wilson, 2010). Economic problems can also occur due to conflicts that occur in the countries of origin of these immigrants.

Conflicts and wars continue to cause economic problems, resulting in a large number of unemployed people. Wars or conflicts that occur in the countries of origin of these immigrants relate to political, security, civil, and other aspects, so they try to leave their home countries (Amiruldin, 2019).

The causes and background of human smuggling cannot be separated from the conditions, order, and even value systems that are considered to not allow the development of human potential and expectations in their homeland. Various population pressures, strategic inequality or uneven distribution of opportunities and socioeconomic development, or the occurrence of various conflicts for various reasons have long been recognized as triggers for illegal migration flows (Pigay, 2005).

Indonesia is a transit country for immigrants to Australia to ask for asylum and improve economic conditions for themselves and their families. As of 2010, there were about 3,200 illegal immigrants from conflict areas in Afghanistan and Central Asia smuggled through Indonesian territory. Meanwhile, in 2011, 2800 refugees and asylum seekers transited Indonesia on their way to Australia. This number has indeed decreased until now, considering the issuance of Australian government policies such as Operation Sovereign Borders (OSB) in order to eradicate the crime of people smuggling and improve protection in the Australian Border Region (Sudirman et al., 2022).

The form of responsibility undertaken by Indonesia, which has a strategic geographical location as a transit country, is limited to the implementation of international customs through the principle of non-refoulment and the protection of migrants' human rights. The non-refoulment principle ensures that a situation will not return or expel a refugee to his country of origin in any way where his life or freedom is threatened. According to the criteria set out in Articles 31 and 33 of the 1951's Refugee Convention, neither unauthorized arrival nor failure to report to the appropriate authorities within the approved time limits can be considered formal grounds for the exclusion of a person from refugee status. However, until now, Indonesia has not ratified this convention. In addition, this principle is not only an international custom but also recognized in other conventions such as the Convention Against Torture (CAT) Article 3 (Widyaningrum et al., 2017).

Indonesia carries out its responsibilities in this regard with the assistance of several agencies, the first of which is the Ministry of Law and Human Rights. This ministry oversees several task execution units related to law and human rights, one of which is known as the Directorate General of Immigration. Under the jurisdiction of the Ministry of Law and Human Rights, the Directorate General is an agency that represents the Indonesian government in dealing with immigration concerns. The Directorate of Investigation and Immigration Enforcement manages the problem of immigration smuggling. For each province in Indonesia,

as an extension of the Ministry of Law and Human Rights, there are regional offices of the Ministry of Justice with an implementing unit in the field of immigration called the Immigration Division. Human smuggling is addressed by an intelligence and immigration enforcement subunit. (Sindiawaty & Purwanti, 2020).

International agencies such as the IOM (International Organization for Migration), which facilitates immigration, and the UNHCR (United Nations High Commissioner for Refugees), which handles refugees and gives refugee status, also support in the processing of illegal immigrants in Indonesia. (Kuswardini & Auliyah, 2021).

People smuggling has become a serious problem for the government and the Indonesian nation, although the movement of crime itself in this country is arguably enough (International Organization for Migration & Australian Customs and Border Protection Service, 2012).

In general, those involved in smuggling in Indonesia are foreigners, consisting of smugglers and smuggled people. At the time of entering the territory of Indonesia, having known and studied the geographical conditions and the character of the people, they were able to easily determine the locations that they considered convenient as a place of exit and prepare transportation facilities and infrastructure by utilizing the economic conditions of coastal communities (Sari, 2014). The area most often used as a transit route to Australia is along the southern coastline of Java Island, which is geographically closer to Australia, especially Christmas Island (International Organization for Migration & Australian Customs and Border Protection Service, 2012). They employ a variety of methods, including transit, transportation, and field organization between smugglers and offenders. Smugglers have been more restricted in Protocols Against Smuggling Migrants by Land, Sea, And Air, which complements the UN Convention Against Transnational Organized Crime last in Article 6 which is essentially for migrants who commit criminal acts that invalidate human beings (human smuggling) with the aim of profit by violating immigration or other matters contrary to applicable laws worldwide legislation or other regulations (quoted from Article 6 of the protocol against the smuggling of migrants by land, sea and air, complements the UN Convention Against Transnational Organized Crime). Enforcement of foreigners apprehended will be handled by police and immigration authorities in collaboration with the Ministry of Foreign Affairs and the foreigner's embassy. But usually, foreigners who are proven to be smugglers will undergo extradition proceedings and are very rarely prosecuted. The judicial process against foreigners proven to be smugglers occurred only once in Indonesia, when the court in Sera (Sari, 2014).

The second person involved is the smuggled person, who is referred to as the victim. The clause of the immigration law, however, does not define the victim of a crime because there is no victim in an immigration offense or crime because the aggrieved is the state. Therefore, the victim of human smuggling will still be called a "smuggled person." This is based on several reasons, namely that the smuggled person under the circumstances says it is his desire to cross into another country illegally (there is no element of coercion to smuggle himself, and they know that the act committed is wrong, but still intend to do it because of the insistence of the circumstances) (International Organization for Migration & Australian Customs and Border Protection Service, 2012).

In the event of the detention of a smuggled person, a state party must follow the Vienna Convention on Consular Relations., including notifying the consular officer of the person's detention. Regarding the repatriation of smuggled migrants, the country of origin must facilitate and accept the rules for the repatriation of persons who are smuggled migrants, at the time of repatriation, both its citizens and those with the right of residence permit in its area. If the migrant does not have a document, then the state party concerned must issue a travel document or other authority to make it easier for people to leave and enter their country (Santoso, 2021).

Basically, Indonesia adheres to the notion of a long-term solution in its treatment of asylum seekers and refugees by prioritizing three ways. (International Organization for Migration & Australian Customs and Border Protection Service, 2012) :

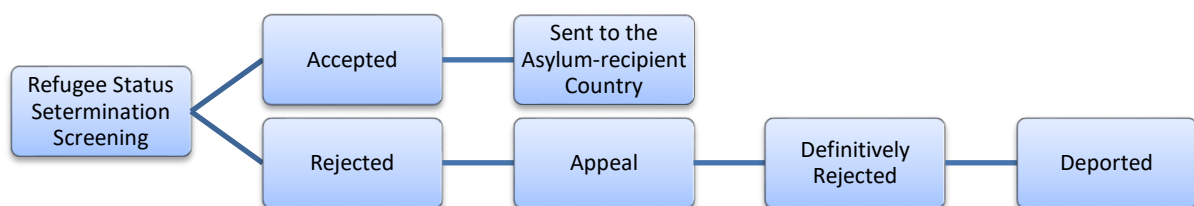
- a. Voluntary Repatriation
- b. Resettlement in Third Country
- c. Local settlement

The government has always emphasized voluntary repatriation as the primary action in its implementation. There are several categories of repatriation of illegal immigrants (International Organization for Migration & Australian Customs and Border Protection Service, 2012) :

- a. The immigrant is willing to go home, has immigration documents, and has to pay a fee to return to his home country. The immigration authorities facilitate his return.
- b. The immigrant is willing to go home and has a fee, but he does not have immigration documents, so the immigration authorities directly contact and coordinate with the embassy of the immigrant concerned.
- c. The immigrant is willing to go home, does not have immigration documents, and cannot afford to go home. In this case, the IOM finances the immigrant, manages the documents sent to the embassy, and monitors whether the immigrant reaches his or her country of origin.

Then, as much as possible, avoid the final solution, namely local settlement, given the state of Indonesia's economy and the rudenim's limited capacity. Meanwhile, the third country process has taken a relatively long time, in accordance with the process carried out by UNHCR. These incidents occur because immigrants refuse to be repatriated and instead prefer to be sent to a third country (International Organization for Migration & Australian Customs and Border Protection Service, 2012).

Every immigrant has the right to request asylum, which is facilitated by UNHCR procedures. Here is a chart of the determination of refugees based on the definition of refugees in the 1951's Convention(Hajar,2013).



Indonesia continues to work through domestic legislation to address the problem of people smuggling. The effort consists of two parts: preventive efforts and repressive efforts. Preventive measures that Indonesia can take before incidents and crimes, are (Quoted from Law No. 6 of 2011 on Immigration, Article 89 paragraph (2)) :

- a. Information exchange with other countries and relevant authorities in the country, including the mode of operation, oversight, and security of travel papers, as well as the legality of such documents and legality of documents;

- b. Technical cooperation and training with other countries include humane treatment of victims, security and quality of travel documents, detection of false documents, information exchange, as well as monitoring and detection of human smuggling by conventional and unconventional means;
- c. Provide legal advice to the community about the criminality of human trafficking and human smuggling so that people do not become victims;
- d. Ensure that travel or identity documents issued are of such quality that they are not easily misused, falsified, altered, copied, or unlawfully issued; and
- e. Ensure the integrity and security of travel documents issued by or on behalf of a country to prevent the unlawful creation of such documents in terms of their issuance and use.

While repressive efforts (efforts to prevent further spread after the incident) (Article 89 paragraph (3) of Immigration Law No. 6 of 2011) :

- a. Immigration investigation against perpetrators of trafficking in persons and human smuggling;
- b. Immigration administrative action against perpetrators of trafficking in persons and human smuggling; and
- c. Cooperation in the field of investigation with other law enforcement agencies.

CLOSURE

Conclusion

- a. Laws and regulations in Indonesia have been interconnected with each other, such as Law No. 6 of 1996 on Indonesian waters, Law No. 6 of 2011 on immigration, Government Regulation No. 36 of 2002 on foreign ships' rights and obligations in carrying out peaceful transit in Indonesian waterways, and Government Regulation No. 37 of 2002 on foreign aircraft and ship rights and responsibilities in carrying out the rights of passage through the archipelago through the Archipelago Sea channel established in accordance with the provisions contained in the UNCLOS 1982, United Nations Convention Against Transnational Organized Crime and Protocol against the Smuggling of Migrants by Land, Sea, and Air, Supplementing the United Nations Convention Against Transnational Organized Crime in regulating the smuggling of immigrants in Indonesian waters.
- b. Indonesia fulfills its obligation through assisting and collaborating with other countries and international organizations, particularly the IOM and UNHCR.. In Indonesia, through the Directorate General of Immigration, the IOM, and UNHCR as an international organization, there is a shared responsibility to assist the government in regulating illegal immigrants in Indonesia. The Directorate General of Immigration supervises immigration infractions, needs, and facilities for immigrants, whereas IOM handles temporary resident status in Indonesia and UNHCR handles asylum or refugee status.. Positive mechanisms and enforcement exist to distinguish between migrants who are victims of smuggling and migrants who are perpetrators of smuggling, ensuring that the basic rights of migrants who leave their countries due to persecution behavior are guaranteed.

Suggestion

- a. There needs to be an introduction about immigrant smuggling so that the public is aware of and understands the crime; as a result, there is effective prevention of immigrant smuggling in Indonesia, and Law No. 6 of 2011 needs to be revised to be more firm in the distinction between immigrants and refugees. Strict supervision is also needed in the implementation of existing laws so that there is a firm positive law for immigrants who enter the territorial territory of the Republic of Indonesia, not only against those who participate in or assist in the smuggling of these immigrants.

- b. The Indonesian government needs to play a more active role in handling illegal immigrants through the Directorate General of Immigration and not just passively wait for UNHCR and IOM. The need for a transcendental agreement between the Government of Indonesia, UNHCR, and IOM for a rapid process in handling illegal immigrants without eliminating the rights of illegal immigrants residing in the territory of the Republic of Indonesia

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